IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.592 OF 2007
IN
SUIT NO.2346 OF 2005

Moti Salim Oosman. ..Plaintiff.

V/s.

K.Gopal Rao & Ors. ..Defendants.

Mr.B.G.Wadhawa for plaintiff.

Mr.Bruno Castelino i/b. Pandya & Co.for defendant Nos. 1 to 3.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 16, 2007.

P.C. :

1. Although reply affidavit is filed on behalf of the defendants, copy thereof has been served on the plaintiff only yesterday evening. If it is so, the same will have to be ignored and cannot be taken on record, inasmuch as sufficient time was given to the defendants to file reply in terms of the order dated 25th April, 2007. For the reasons mentioned in the affidavit in support of the Chamber Summons which have remained uncontroverted, the plaintiff should succeed in this Chamber Summons.

2. Counsel for the defendants however, submits that the facts now stated, which will form part of

the amended pleadings, were well within the knowledge of the plaintiff. This argument is countered by the counsel for the plaintiff on the ground that the facts which are now sought to be incorporated in the pleadings are founded on the information made available to the plaintiff through the reply affidavit filed on 30th March, 2007.

3. As mentioned earlier, the reasons stated on affidavit by the plaintiff having remained uncontroverted the plaintiff is entitled for relief in terms of prayer clause (a). However, at the same time, it is made clear that this order is not an expression of opinion either way on the facts stated in the amended pleading which are granted in terms of this order.

4. Accordingly, Chamber summons is made absolute in terms of prayer clause (a) on condition that the amendment to be carried out within two weeks from today. Order of status quo granted earlier to continue for a period of three weeks from today to enable the plaintiff to take recourse to appropriate remedy which will be considered on its own merits.